IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

WP(C).No. 26150 of 2006(K)

PETITIONER:

M.M.VARGHESE,
MANGALATHU HOUSE, KOOTHATTUKULAM P.O.,
MOOVATTUPUZHA, ERNAKULAM DISTRICT-686 662.

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
SRI.VARGHESE PARAMBIL
SRI.BOBAN VARGHEESE

RESPONDENTS:

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1. SECRETARY,
LOCAL SELF GOVERNMENT (M) INSTITUTIONS,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.

2. KOOTHATTUKULAM GRAMA PANCHAYATH,
REP. BY ITS SECRETARY,
KOOTHATTUKULAM P.O., MOOVATTUPUZHA,
ERNAKULAM DISTRICT-686 662.

R2 BY ADV. SRI.P.V.SANTHOSH, SC.
R1 BY SR.GOVT.PLEADER SRI.MATHEW G.VADAKKEL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

PIUS C. KURIAKOSE, J.

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W.P.(C) No.26150 OF 2006

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DATED THIS THE 1ST DECEMBER, 2006

J U D G M E N T

The petitioner, an Ex-serviceman submits that after 15 years of service in the Forces, he obtained a job at the Ordnance Factory at Jabalpur where he was working till 28.2.2004. He owns 2.25 cents of land in Koothattukulam Village. In 1993 while he was working at the Ordnance Factory, he applied for sanction for a building plan for constructing a building in his property. The 2nd respondent-Koothattukulam Grama Panchayat issued Ext.P1 certificate which is clearly to the effect that there is no need for permission or sanction for constructing buildings except factory buildings in the area of the Panchayat. Ext.P1 is dated 20.4.1993. Ext.P2, he submits, is copy of the plan he had submitted before the 2nd respondent. Since he was entitled to make any sort of construction except factory building, he altered the plan and constructed a three storied residential-cum-commercial building. But after construction when he approached the Panchayat, the Panchayat started dodging the matter on one reason or the other. Ext.P3 letter was issued by the petitioner from Jabalpur

requesting for allotment of building number. Since Ext.P3 was in vain, he approached this Court and filed W.P.(C)No.2456 of 2006. On the basis of the interim direction given by this Court, the Committee of the Panchayat considered the issue and passed Ext.P4 resolution deciding that since the building was constructed violating the Building Rules, number can be allotted only upon producing regularisation order from the competent authority. Against Ext.P4, he filed an appeal before the Tribunal for Local Self Government Institutions. In that appeal, the Tribunal passed Ext.P5 order dismissing the appeal, but at the same time directing the Panchayat to number the building as an unauthorised building and giving the Panchayat liberty to initiate action against the unauthorised construction. It is impugning Ext.P5 that the present Writ Petition has been filed raising several grounds with the following prayers:-

i) quash Ext.P4 resolution of the Panchayat and Ext.P5 order of the Tribunal;

ii) issue directions to the respondents to number the petitioner's building, treating the same as a legally constructed one.

2. When the Writ Petition came up for admission, I ordered notice on admission and considering the submissions of the learned

counsel for the petitioner, I directed the 2nd respondent-Panchayat to number the building provisionally.

3. It was Mr.Varghese Parambil, Advocate who addressed me on behalf of the petitioner. Mr.P.V.Santhosh, Standing Counsel addressed me on behalf of the 2nd respondent-Panchayat. Arguments were addressed on behalf of the 1st respondent-Government by the learned Government Pleader.

4. Mr.Parambil submitted that in the face of Ext.P1 certificate, there is absolutely no question of violation of the Building Rules in this case. So long as Ext.P1 was there, the petitioner was entitled to construct any sort of building with any number of storeys, provided such constructions did not cause any nuisance or violation of any of the rights of the neighbours. There is no difference whatsoever as to whether it is a single storied building or a multi storied building or a residential building or a non-residential building which has been constructed. Since Ext.P1 is not in dispute, all the objections to the numbering of the building are unsustainable. Learned counsel asserted that the building was completely constructed by the last quarter of 1995 which was well within the period of three years from 20.4.1993, the date of Ext.P1. Counsel would refer to sub-rule (2) of

Rule 9 of the Kerala Municipality Building Rules, 1984 and submit that permit once sanctioned will remain valid for three years. Therefore, even applying those provisions, since the construction was over within three years, the same is to be found as perfectly legal. The direction of the Tribunal to number the building as an unauthorised construction and allowing the Panchayat to initiate appropriate action against the unauthorised construction was totally without jurisdiction since at the time of issuance of Ext.P1, the Building Rules had not been brought into force in the Panchayat.

5. Mr.P.V.Santhosh, learned Standing Counsel for the Panchayat would however support Ext.P5. According to the learned Standing counsel, Ext.P5 is a well reasoned order passed by a judicial Tribunal and there is no warrant at all for interfering with Ext.P5 in exercise of jurisdiction for judicial review. Learned Standing Counsel would justify Ext.P4 resolution on the reasons contained therein and also on the basis of the contentions raised before the Tribunal. He submitted that as per Government Order dated 30.4.1993, the provisions of the Kerala Municipality Building Rules were extended to Koothattukulam Panchayat with effect from 15.5.1993. Standing Counsel submitted that the Panchayat was a municipality till 31.3.1993 and consequent to

its conversion as a Panchayat thereafter, the Government by order dated 30.4.1993 extended the provisions of the Building Rules to the Panchayat. Ext.P1 certificate was issued to the petitioner at a time when the Building Rules had not been made applicable. Ext.P1 certificate was admittedly issued on the basis of an application for construction of a single storied residential building. Now the petitioner's application for numbering is in respect of a three storied residential-cum-commercial building. Its construction was started after the provisions of the Building Rules were extended to the Koothattukulam Panchayat. Significantly, the application for assigning number is submitted for the first time on 13.1.2000. The construction was obviously made at a time when the Building Rules were applicable and therefore the construction which was without permit offended the provisions of the Building Rules. Learned Standing Counsel submitted that the petitioner had submitted applications before Government and the Government passed orders on 28.12.2004 and 6.12.2005 (marked as Exts.P9 and P10 before the Tribunal) permitting regularisation of the building subject to certain conditions. But before the Tribunal the stand taken by the petitioner was one of disowning the above orders. The Tribunal therefore found it unnecessary to consider the effect of

Exts.P9 and P10 orders. On the resolution of the Panchayat the Tribunal found that it was very difficult to accept the case of the petitioner that the construction of the building was completed before the provisions of the Building Rules were extended to the Panchayat.

6. I have gone through Ext.P5 in full. I am in agreement with the learned counsel for the Panchayat that Ext.P5 does not warrant any interference in judicial review. The finding that the construction of a three storied residential-cum-commercial building grossly deviates from a single storied residential building shown in Ext.P2 plan submitted before the Panchayat is indisputable. The further finding that the construction was actually effected only after the provisions of the Building rules were extended to the Panchayat by the Government notification is based on evidence, documentary and circumstantial. However, since I find that the effect of the directions in Ext.P5 will be more calamitous, from the petitioner's point of view, than Exts.P9 and P10, I permit the petitioner to seek a review of Ext.P5 before the Tribunal, if he is prepared at least now to own up Exts.P9 and P10. If the petitioner owns up Exts.P9 and P10 and files an application for review before the Tribunal within one month of his receiving copy of this judgment, the Tribunal will entertain that application and pass

appropriate orders considering the effect and implications of Ext.P9 and P10.

The Writ Petition will stand dismissed subject to the above directions.

(PIUS C. KURIAKOSE, JUDGE)

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Wpc.28501/03

The petitioner is aggrieved by what he describes as the arbitrary and illegal rejection of his applications for renewal of two licences by the respondent-Sulthan Batheri Grama Panchayat, for running meat stalls in building No.994 of Ward 10 and building No.1016 of Ward 10 of the respondent-Panchayat. Earlier, he had approached this Court complaining that the respondent is not inclined to consider his applications for renewal of licences and this Court passed Ext.P1 judgment directing consideration of his applications. Singnificantly, this court permitted the petitioner by Ext.P1 judgment to continue to conduct meat stalls till the Panchayat took a decision on the renewal applications. The petitioner claims that he has been running the meat stalls for the past 33 years and the last licences issued by the Panchayat expired on 31.3.2003; and Ext.P1 judgment pertains to consideration of applications for renewal of those two licences. Exts.P2(a) and P2(b) are receipts issued by the Panchayat against remittance of licence fee against those renewal applications which

were submitted by him on 15.2.2003. Later, a reminder was submitted on 10.3.2003 and Ext.P3 is copy of the reminder. Since action was not being taken on the renewal applications, he filed O.P.10984 of 2003 and this Court admitted the O.P. and directed the respondent not to dispossess the petitioner from his business. In that O.P. the contention of the petitioner was that the refusal by the Panchayat to grant him renewal of licences amounts to interference with his fundamental rights for carrying on trade and business. The defence of the Panchayat was that they had opened a public market and therefore every meat vendor is bound to shift his business to that public market and that the continuance of meat stalls in other places will be against public interest. This Court after considering the contentions held that the Panchayat has no authority to impose absolute ban on running meat stalls outside the public market. Ext.P1 already referred to is the judgment in O.P.No.10984 of 2003 and the date of Ext.P1 judgment is 25.7.2003. On the very next day, the respondent-Panchayat issued Ext.P4 notice to the petitioner without referring at all to Ext.P1 judgment but requesting him to appear for a hearing in connection with certain complaints received against the conduct of meat stalls by him. Pursuant to Ext.P4, the petitioner

appeared before the respondent on the hearing date. He complains that he was never heard by the respondent on his applications for renewal of licences; but Ext.P5 order was passed on 6.8.2003 rejecting his applications. He says that Ext.P5 is passed in violation of the directions in Ext.P1. He claims that till the Panchayat opened its own new market, there was no complaint regarding the hygiene standards maintained by him in his meat stalls. The Panchayat is compelling all meat vendors to shift their stalls into the new market. But due to inadequacy of facilities and the unhygienic conditions which prevail in the public market, the vendors including the petitioner are diffident in shifting to the public market. This is also for the reason that there is no guarantee that those who shift to the public market will be given the same stalls during the next year also. He relies on Ext.P6 report in Mangalam Daily to support his allegation regarding inadequacy of facilities and unhygienic conditions in the market. According to the petitioner, his meat stalls are marble floored and the walls are tiled and dark glasses have been fixed for avoiding nuisance to the public. He also points out that there is considerable public demand to have meat, fish and vegetables available in different parts of a town and that even the people of the area where the petitioner has been

conducting meat stalls are raising such a demand. The petitioner relies on Ext.P7 which is copy of a report in Madhyamam in this connection. The petitioner denies the findings in Ext.P5 to the effect that there are public offices near to his meat stalls. The police station and rest house referred to in Ext.P5 are half-a-kilometre away and other offices and hospitals are still beyond the above distance. Impugning Ext.P5 on the various grounds raised in the Writ Petition, the petitioner prays that Ext.P5 be quashed and a writ of mandamus be issued commanding the Panchayat to renew the licences.

2. No counter affidavit has been filed answering the averments in the Writ petition. But during the pendency of the Writ Petition, the room in which the petitioner was conducting meat stalls was locked and sealed by the respondent and the petitioner submitted Ext.P8 before the Panchayat requesting that licence be issued in his favour since all arrangements have already been made by him so as to avoid any inconvenience to the public. I.A.2188 of 2004 was filed by him seeking a direction to the Panchayat to remove the lock and seal and to release the room to him. It is to that I.A. that a counter affidavit has been filed describing the same as counter affidavit in the Writ Petition. Through that counter affidavit it is contended that Ext.P5 is a

speaking order which was passed after hearing the petitioner in detail and that even thereafter the petitioner continued to do his business in violation of the rules and without valid licences. It is further contended that the general public had made several complaints about the running of the meat stalls by the petitioner and this was why the Panchayat became compelled to lock and seal his room. It is also contended that the petitioner has not submitted any application for licence to the Panchayat for running meat business in the said shop and that his application for permission to conduct meat business cannot be entertained before the Writ petition is finally disposed of. The petitioner filed I.A.5601/06 for issuance of a commission for local inspection and obtainment of a report on the following aspects:

1. facilities maintained by the petitioner in building No.994 of Ward 10 and building No.1016 of Ward 10;

2. facilities provided by the Panchayat in the two markets established by it in Sunthan Batheri town;

3. relative distance from the buildings of the petitioner and the markets established by the Panchayat to public and Government Offices.

This Court allowed the I.A. and deputed an advocate commissioner.

A physically handicapped educated youth is aggrieved by Ext.P6 order of the 1st respondent-Varapetty Grama Panchayat directing immediate closure of a chicken farm which was being conducted by him, on the reason that the farm is causing severe pollution and serious health hazards. The 2nd respondent is the Health Supervisor of the Primary Health Centre. The Environmental Engineer of the Pollution Control Board, Ernakulam was impleaded as additional 3rd respondent. Additional respondents 4 to 6 who were persons opposed to the conduct of the chicken farm by the petitioner were impleaded on their application.

2. On admitting the Writ Petition, this Court noticed that Ext.P6 was passed without hearing the petitioner and directed Ext.P6 to be treated as a provisional order and permitted the petitioner to file objections to the same. The Panchayat was directed to take a decision on the basis of the objections after hearing the petitioner and to pass a reasoned order. It was observed that if the petitioner is aggrieved he can pursue his statutory remedies. Ext.P6 was ordered

to be kept in abeyance for a period of two months.

3. The writ petitioner relies on various documents. Ext.P1 is copy of the disability certificate issued by the General Hospital to him. Ext.P2 is copy of licence dated 24.6.2005 issued by the Panchayat for the conduct of chicken farm. Ext.P3 is copy of the certificate issued by 2nd respondent which is to the effect that there are no residential buildings within 100 metres of the farm and the farm is being conducted in a hygienic way. Ext.P4 dated 17.3.2006 is copy of the application submitted by the petitioner for renewal of licence for the year 2006-07. Ext.P5 is copy of the receipt against remittance of licence fee. Ext.P6 is the impugned order of the Panchayat directing the petitioner to stop the chicken farm within seven days. He submits that Ext.P6 was issued ignoring Ext.P4 application which was pending consideration before the Panchayat and the circumstance that the same had not been rejected so far. He contends that there are no buildings within 100 metres of the chicken farm. It is only because of the change in the ruling party of the Panchayat that Ext.P6 order has been issued at the instance of persons who are politically opposed towards the petitioner.

(PIUS C. KURIAKOSE, JUDGE)

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